

Management (“CMP Decl.”), Att. 5, App. A, Tab 11 at ¶ 10 and Section III. As the ACC Staff observed, “[T]here is no question . . . that Qwest has, with extensive assistance by the CLECs, developed one of the most comprehensive and effective Change Management Processes in existence in the telephone industry today.” 58/ That plan is the product of a collaborative redesign process, begun in July 2001, conducted jointly by Qwest and CLECs. 59/ All significant provisions have been agreed upon and implemented, including procedures governing changes to Qwest’s products and processes. CMP Decl., Section V(D), ¶ 143. Qwest’s change management process is identical throughout its 14-state region. *Id.* ¶ 21.

As discussed below, Qwest’s current change management process satisfies each of the factors the Commission considers in evaluating a BOC’s change management plan. 60/ Those factors also are addressed in the CMP Declaration at Section V (accessibility of CMP

58/ ACC Staff Supplemental Report on Change Management (May 7, 2002), CMP Decl. Exh. DLF-CMP-10. *See also* Cap Gemini Ernst & Young, Qwest Change Management Process Redesign Evaluation: Version 5.0 (May 1, 2002) at 42, CMP Decl. Exh. DLF-CMP-9 (“[w]hen the redesign effort is completed, Qwest’s Change Management Process will go far beyond any other such process in the local telecommunications industry,” *citing* comment by Allegiance Telecom that Qwest’s CMP is “more encompassing and responsive” than those of other ILECs because it includes product and process issues as well as systems issues); CMP Decl. § IV(C).

59/ The procedures governing the redesigned change management process are set forth in Qwest’s “Change Management Process for Local Services,” hereafter referred to as the “CMP Framework.” The CMP Framework is included as CMP Decl. Exhibit DLF-CMP-2, and may be found on Qwest’s wholesale website at <http://www.qwest.com/wholesale/cmp/whatiscmp>. The current status of agreements reached on the redesign of the CMP Framework is reflected in a redlined version of the CMP Framework, which is continuously updated to reflect portions that have been agreed upon and included in the text. The current version of this document, the “Interim Draft Master Redlined CLEC-Qwest CMP Redesign Framework,” is included as CMP Decl. Exhibit DLF-CMP-3, and may be found on Qwest’s wholesale website at <http://www.Qwest.com/wholesale/cmp/redesign.html>, under “Redesign Documentation.”

60 *New Jersey 271 Order*, App. C ¶¶ 40, 42. These include the five factors specifically identified at *id.*, App. C ¶ 42, as well as the adequacy of technical assistance provided by the BOC to CLECs using its OSS and the demonstration of a pattern of compliance with a BOC’s change management procedures over time.

information, CLEC input, dispute resolution, and pattern of compliance), and in the OSS Declaration at Section VIII (technical assistance, EDI documentation, and interface testing).

1. Accessibility and organization of information relating to the change management process. Qwest provides easy access to well-organized information regarding its change management process, both through its wholesale website and through frequent communications with CLECs via e-mail, the notifications process, and otherwise. *See* CMP Decl. at Sections III(C)(3), V(A); <http://www.qwest.com/wholesale/cmp/index.html>. The contents of the CMP website were negotiated by CLECs and Qwest in the redesign session and are specified in the CMP Framework at Section 3.3.

Exhibit DLF-CMP-7 to the CMP Declaration contains screenshots of the CMP website pages as they appeared on July 8, 2002. The Qwest wholesale website describes the CMP process, shows CLECs how to participate, provides forms and instructions, provides up-to-date information about change requests under consideration, includes CMP meeting agendas and minutes, and makes new documentation available for review and comment online by CLECs.

The Third Party Test has confirmed the accessibility and completeness of information about Qwest's change management process. For OSS interfaces, KPMG found that "[t]he change management process is in place and documented," that it "has a framework to evaluate, categorize, and prioritize proposed changes," and that "documentation regarding proposed changes is distributed to wholesale customers." Final Report at 514-19. As the test, the CMP Framework, and Qwest's wholesale website demonstrate, Qwest's CMP is "clearly organized and readily accessible to competing carriers." *New Jersey 271 Order*, App. C ¶ 42.

2. CLEC input into the design and continued operation of the change management process. Qwest's change management process, and the redesign process that

generated the current CMP, demonstrate that competing carriers have had and will continue to have “substantial input in the design and continued operation” of Qwest’s CMP. *New Jersey 271 Order*, App. C ¶ 42.

As noted above, the current Qwest change management plan is the product of an intense, collaborative effort by Qwest and CLECs to redesign Qwest’s change management procedures. ^{61/} These “redesign” meetings have taken place generally four days per month, beginning in July 2001. The meeting agendas and minutes are posted on the website. KPMG representatives attended many of the redesign sessions, as did members of the Colorado PUC staff. CMP Decl., ¶ 14. The product of this collaborative effort is the current Qwest Change Management Plan, or the “CMP Framework.” *Id.* ¶ 12, Exh. DLF-CMP-2.

The Qwest CMP provides for substantial CLEC input throughout the lifecycle of both CLEC and Qwest initiated change requests (“CRs”). *See generally* CMP Decl. at ¶¶ 131-34. Qwest and CLECs meet on a regular basis -- two days a month -- to discuss, consider, and modify CRs and to discuss Qwest’s proposed responses to CRs. One day is devoted to OSS interface CRs, one day to product and process CRs. *Id.* ¶¶ 4 & n.9, 131-32. CLECs and Qwest also meet to prioritize the accepted OSS interface change requests in advance of each new release. *Id.* ¶¶ 5, 133, 166. Qwest and each CLEC have one vote apiece in the prioritization

^{61/} The redesign meetings are independent of the joint CLEC/Qwest meetings conducted to process change requests, which have been going on since 1999. CMP Decl. ¶ 4. This joint forum manages changes related to Qwest’s products, processes, and OSS interfaces that support the five categories of OSS functionality. *Id.* The change management process in effect until the fall of 2001 was called the Co-Provider Industry Change Management Process or “CICMP.” *Id.* at ¶ 4 n.5. Qwest does not base this Application upon that prior plan, but relies instead upon its development of and performance under the current Qwest change management process – as documented in the CMP Framework (CMP Decl. Exh. DLF-CMP-2). This brief, as well as the CMP Declaration, focus on the current plan, and the collaborative redesign process through which it was developed.

process. *Id.* at ¶¶ 77, 133; CMP Framework, § 10.2.2. The prioritization process is described in detail in the CMP Declaration at Section III(C)(13).

CLECs also have the opportunity to review and submit comments on draft technical specifications for the introduction of new or changed systems interfaces and to participate in “walk-throughs” of those specifications with Qwest subject matter experts, all at specified intervals prior to release. CMP Decl. Sections III(C)(10), (11); CMP Framework Sections 7, 8. CLECs also are able to review and comment on draft documentation for new products and technical publications, via a web-based comment tool. OSS Decl. ¶ 613 & n.887; CMP Decl. Exh. DLF-CMP-7. In addition to providing for CLEC input into the processing of CRs and the finalization of technical specifications, the CMP Framework includes, for example, notification intervals for changes to interfaces, production support procedures for handling trouble tickets, and escalation and dispute resolution procedures, all of which promote CLEC involvement in the management of changes to Qwest’s OSS interfaces, products, and processes. CMP Decl. Sections III(C) (11), (15), and (17); CMP Framework Sections 8, 12, and 14.

3. *Procedures for the timely resolution of change management disputes.* Qwest has in place procedures for the timely resolution of change management disputes, both with respect to the change management process itself and with respect to the CMP redesign process. ^{62/} These escalation and dispute resolution procedures were developed jointly by CLECs and Qwest in the redesign process.

For the change management process itself, the streamlined escalation process enables CLECs to raise a disputed issue to a single point of contact in the Qwest organization,

^{62/} CMP Decl. § V(C)(17). *See* CMP Framework § 13 (escalation); § 14 (dispute resolution); CMP Re-design Procedures for Voting and the Impasse Resolution Process, CMP Decl. Exh. DLF-CMP-6.

and to obtain a final binding statement of position from that contact within seven days for a disputed change request and within 14 days for other escalations. CMP Decl. ¶¶ 93-94; CMP Framework Section 13.2. A CLEC or Qwest can bypass the escalation process and immediately invoke the dispute resolution process. Disputes may be submitted to a third party arbitrator, if the parties agree, or to an appropriate regulatory agency. CMP Decl. ¶¶ 95, 137; CMP Framework Section 14. To date, the escalation procedures have been invoked a total of six times; no change management issue has yet gone to dispute resolution under the new CMP Framework. CMP Decl. ¶¶ 135.

Separate dispute resolution procedures apply to the redesign process. The parties are required to negotiate in good faith and make every effort to reach consensus before invoking the dispute resolution procedures. *See* CMP Decl. ¶¶ 138-41; CMP Re-design Procedures for Voting and the Impasse Resolution Process, CMP Decl. Exh. DLF-CMP-6. To date, only one redesign issue has gone to impasse, and it was quickly resolved by the Colorado Public Utilities Commission. CMP Decl. ¶ 139. No other issues in the redesign process are likely to go to dispute resolution. *Id.* ¶ 140.

4. Availability of a stable testing environment that mirrors production. Since 1998, Qwest has provided to CLECs a test environment for testing and becoming certified to use Qwest's IMA-EDI interface. This "Interoperability" environment validates test transactions against actual production data for pre-order and order transactions, using real production legacy systems. Transactions are submitted into a test system that is a copy of IMA and is physically separate from the production database. OSS Decl. ¶¶ 696-697; *see Georgia/Louisiana 271 Order*, ¶ 187.

On August 1, 2001, Qwest implemented another test environment, the stand-alone test environment (SATE), partly in response to concerns raised by KPMG and CLECs regarding the Interoperability environment -- in particular, regarding the desire for CLECs to use their own account data to test in Interoperability. OSS Decl. ¶¶ 702-710; Final Report at 580. In SATE, Qwest provides CLECs with account data and scenario information (test decks) that can be submitted into the test environment, which returns pre-defined test scenarios that mimic production responses. OSS Decl. ¶¶ 703-705. CLECs may test in either or both of the Interoperability and SATE environments, which offer CLECs different options and capabilities. *Id.* ¶ 693. Both offer a “stable test environment that mirrors production.” *New Jersey 271 Order*, App. C ¶ 42.

Both the Interoperability Environment and SATE are “stable” because Qwest has undertaken to make no changes (other than bug fixes) during the 30-day period prior to implementation of a major release. OSS Decl. ¶ 717. The Interoperability environment “mirrors production” because it uses a copy of the production EDI software, and because its test responses are generated from production legacy systems. *Id.* ¶ 719. SATE “mirrors production” by allowing CLECs to run practice transactions that generate responses that mimic production without actually using production data or production systems. *Id.* ¶ 720-25. SATE enables CLECs to test in SATE their ability to receive and process every response they might receive in production, and thus “perform[s] the same key functions” as production. *Id.* ¶ 725, *quoting Texas 271 Order* at 18421-22 ¶ 138). To further enhance SATE, Qwest now provides automated post-order responses (since January 26, 2002) and, effective May 20, 2002, has implemented test flow-through components and a test service order processor, even though the FCC has not

required these capabilities under Section 271. *Id.* ¶¶ 708-710; *see Texas 271 Order*, 15 FCC Rcd at 18421 ¶ 138.

The commercial data demonstrate the adequacy of Qwest's test environments. As of June 1, 2002, 27 CLECs had tested and gone into production using Qwest's Interoperability environment. OSS Decl. ¶ 728 and Confidential Exh. LN-OSS-70. As of June 1, 2002, , 11 CLECs had successfully completed SATE testing and had achieved production status for EDI implementation of pre-ordering capabilities, with five additional CLECs testing and achieving production status through a service bureau. OSS Decl. ¶ 728 and Confidential Exh. LN-OSS-70. As the Commission concluded in approving SBC's Texas Section 271 application, evidence that CLECs are able to test and achieve production status strongly supports a conclusion of the adequacy of the test environment. *Texas 271 Order*, 15 FCC Rcd at 18420 ¶ 134. Here, many more than the three CLECs cited in the SBC Texas case have tested successfully, both in Interoperability and in SATE. OSS Decl. ¶ 728.

One PID is relevant to SATE. PO-19 "evaluates Qwest's ability to provide accurate production-like tests to CLECs for testing both new releases and between releases in the SATE environment." 14-State PID 5.0 at 26 (PO-19). A 95% benchmark took effect in the ROC states in March. *Id.* Qwest satisfied this measure in the last four months ending in May. OSS Decl. ¶ 729; Regional Commercial Performance Results at 75 (PO-19). Qwest has agreed to modify the current PID to create a submeasure (PO-19B) that would compare the execution of the same transactions in production and in SATE, in order to further measure the extent to which SATE mirrors production. OSS Decl. ¶¶ 730-31. While the precise formulation of PO-19B is still being negotiated before the ACC, Qwest expects to report the June results of the new submeasure to HP in mid-July. *Id.*

Qwest makes both the Interoperability environment and SATE available for an extended testing period. CLECs may test a particular EDI release in either environment for 30 days prior to and, on average, six months after the introduction of the next release. OSS Decl. ¶ 717; CMP Decl. ¶ 32. The FCC has cited with approval this practice of “versioning,” because versioning “ensures that system changes and enhancements do not adversely affect a carrier’s ability to access the BOC’s OSS.” *Massachusetts 271 Order* at ¶ 107, *quoting Texas 271 Order*, 15 FCC Rcd at 18408 ¶ 115.

KPMG (with pseudo-CLEC HP) evaluated Qwest’s EDI interface testing environments and documentation in Test 24.6. KPMG found that Qwest had satisfied the vast majority of test criteria for interface testing. Final Report at 575; OSS Decl. ¶¶ 732-738. For example, KPMG concluded that “carrier-to-carrier-test environments are available and segregated from Qwest production and development environments.” Final Report at 581-82.

The only EDI interface evaluation criterion that KPMG found unsatisfied in the Final Report is whether “a functional test environment is made available to customers for all supported interfaces.” Evaluation Criterion 24.6-1-8; Final Report at 580-581. Related to this finding are two closed unresolved exceptions, E3077 and E3095. As discussed below and in the OSS Declaration, the issues raised by KPMG are not significant under Section 271. 63/

In one of the exceptions, KPMG noted that “SATE transactions are manually generated, and that the environment does not support flow-through transactions.” Final Report at 580-581, *citing* Exception 3077. Qwest has addressed both of these issues, through the

63/ KPMG also issued a closed unresolved exception regarding Qwest’s maintenance and repair interface, EB-TA. As discussed in the OSS Declaration, that exception (E3109) does not raise Section 271 issues because the FCC does not require BOCs to provide application-to-application maintenance and repair interfaces, and thus could not require a “stable test environment that mirrors production” for such an interface. OSS Decl. ¶¶ 760-768.

implementation of automated responses (VICKI) in January 2002 and through the implementation of flow-through capability and a test service order processor in May 2002. OSS Decl. ¶¶ 708-710. While KPMG may not have had an opportunity to evaluate fully these additional features of SATE, neither is required under FCC precedent; thus, no Section 271 issues arise. *See, e.g., Texas 271 Order*, 15 FCC Rcd at 18421-22 ¶¶ 136, 138 (flow-through testing capability not required).

In its closed unresolved Exception 3077, KPMG also commented that “the data contained within the order responses is not consistent and may not mirror the data that would be found in production responses.” ^{64/} The introduction of flow-through capability should address this concern. *See* OSS Decl. ¶¶ 753-764. In any event, to the extent responses differ from production, this is intended, and does not affect a CLEC’s ability to test its code. *Id.* ¶ 710. All IMA error messages are provided in SATE identically to production, since SATE uses a copy of production IMA to process test transactions. *Id.* at ¶ 721. The legacy system error messages may not always be identical in SATE to those generated in production, given the many possible legacy system error messages that are available in production. *Id.* at ¶ 722. By coding a relatively small percentage of possible error messages into SATE, CLECs are able to test their ability to process 100 percent of possible error messages they would receive in production. *Id.* Any known differences between SATE and production are noted, published, and discussed with CLECs. *Id.* ¶ 723 and n.1061, ¶ 752. If a CLEC wishes to add a particular test scenario or response to SATE, Qwest will add it within ten days of approval. *Id.* ¶ 723. Significantly, no CLEC to date has requested the addition of any error message to SATE. *Id.*

^{64/} KPMG Second Response on E3077, January 24, 2002, Att. 5, App. G, at 3. *See also* OSS Decl. ¶ 751.

SATE thus satisfies the Section 271 “mirroring production” requirement. As the Commission has stated, the responses received in testing need not be “identical” to those received in production, so long as they perform “the same key functions,” which SATE clearly does, by enabling CLECs to successfully test whether their code can receive and process all responses that might be received in production. *Texas 271 Order*, 15 FCC Rcd at 18421-22 ¶ 138; OSS Decl. ¶ 724-726. The fact that 11 individual CLECs (and five others through a service bureau) have gone into production through SATE testing is strong evidence that the testing environment satisfies the requirements of Section 271. OSS Decl. ¶¶ 727-28 and Confidential Exh. LN-OSS-70; *Texas 271 Order*, 15 FCC Rcd at 18420 ¶ 134.

KPMG also took issue with the range of products available for testing in SATE. Final Report at 580-81, *citing* Exception 3095. For a number of reasons, this is not an issue under Section 271. The Interoperability Environment is available for testing any Qwest product offered in production. OSS Decl. ¶ 696. SATE was developed to include testing of all resale and UNE products that CLECs were ordering through IMA-EDI. *Id.* ¶ 756. Qwest also continues to monitor and add products to SATE in response to CLEC expressions of interest. *Id.* at ¶ 706. If CLECs want Qwest to add another product to SATE, they may use the CMP process to request that change. *Id.* ¶ 756. Qwest has introduced 23 such CRs, which have been prioritized by CLECs and Qwest, with two prioritized high. *Id.* ¶¶ 757-758. In addition, an interface testing Users’ Group, composed of representatives of CLECs, Qwest, HP, and KPMG, meets monthly as part of the CMP Forum. It gives CLECs the opportunity to provide regular feedback to Qwest and to work jointly with Qwest to develop new SATE CRs and otherwise improve Qwest’s interface testing environments. *Id.* ¶ 705-707.

HP's comprehensive evaluation of SATE in Arizona provides additional support for the conclusion that SATE is adequate to meet the Section 271 requirements. Unlike KPMG, HP conducted transaction testing to "assess[] the adequacy of Qwest's IMA-EDI SATE to facilitate CLECs in testing their EDI interfaces and to determine to what degree" SATE mirrors production. HP SATE Summary Evaluation Report for Qwest IMA-EDI, Final Release, version 2.0, December 21, 2001, at Section 6.1 (OSS Decl. Exh. LN-OSS-83). After completing this comprehensive evaluation, HP concluded that "SATE is adequate to support Qwest CLEC Testing in the State of Arizona, given the current level of CLEC usage." *Id.* Section 1.1. It is also adequate for the rest of the 14-state region because SATE is the same test environment for the entire region and has been successfully used by at least ten CLECs on a region-wide basis. OSS Decl. ¶¶ 739.

In sum, nothing in the KPMG test results undermines the conclusion that each of Qwest's interface testing environments independently satisfies the Commission's requirement that a BOC provide CLECs a "stable test environment that mirrors production." *New Jersey 271 Order*, App. C ¶ 42.

5. Efficacy of the documentation used by CLECs to build an EDI interface.

Qwest provides CLECs with assistance in developing an EDI interface by (1) providing CLECs with a well-documented EDI development process; (2) maintaining a CLEC-specific IMA-EDI development team; (3) making available detailed interface design specifications and other documentation; (4) working with CLECs on EDI development through the change management process; and (5) providing technical assistance and other support. OSS Decl. ¶¶ 659-675.

As of June 1, 2002, 31 CLECs had been certified to use Qwest's EDI and gone into production. *Id.* ¶ 676 and Confidential Exh. LN-OSS-70. One PID, PO-16, is relevant to

the adequacy of Qwest's documentation. It measures the timeliness of Qwest's release notifications for specified OSS interfaces, including EDI. OSS Decl. ¶ 677; 14-State PID 5.0 at 24-25 (PO-16). Qwest satisfied this PID in three of the last four months ending with May. (No release notifications were due in June.) OSS Decl. ¶ 677; Regional Commercial Performance Results at 74 (PO-16). Effective April 1, 2002, Qwest also has made significant changes to its process for tracking and issuing release notifications, including the designation of a product manager to track dates, which has resulted in perfect performance for this PID in April and in May. OSS Decl. ¶ 678; CMP Decl. ¶ 163. The results of the Third Party Test also confirm that Qwest has satisfied this aspect of the FCC's Section 271 requirements. *See* OSS Decl. ¶¶ 680-687. Qwest satisfied all applicable tests related to EDI documentation. *Id.*

The extensive nature of Qwest's EDI documentation, the commercial data showing successful implementation of CLEC EDI interfaces, and the results of the Third Party Test, all demonstrate the "efficacy of Qwest's EDI documentation" in enabling CLECs to build an electronic gateway. *New Jersey 271 Order*, App. C ¶¶ 40-42.

6. Technical assistance. As part of its change management analysis, the FCC evaluates whether the BOC "is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *New Jersey 271 Order*, App. C ¶ 40, *quoting New York 271 Order*, 15 FCC Rcd at 3999-4000 ¶ 102. Qwest fully satisfies this test.

Qwest offers CLECs an extensive array of training and assistance, including personalized guidance when establishing OSS interoperability (*i.e.*, a CLEC-specific implementation team); access to wholesale website information, including a lengthy PCAT; instructor-led classroom training on multiple OSS-related topics; web-based interactive training;

multiple handbooks; and widely available Help Desk support for trouble-shooting and problem-solving. OSS Decl. ¶¶ 589-631. Qwest also maintains an extensive account establishment and management team to assist CLECs in setting up and maintaining their relationship with Qwest. *Id.* ¶ 608 and Exh. CLD-OSS-45.

Qwest has met or exceeded the benchmark for the PID that is relevant to technical assistance for the last four months ending in May. OP-2 evaluates the timeliness with which Qwest responds to CLEC calls placed to the Wholesale Markets Help Desk. OSS Decl. ¶¶ 632-636; 14-State ROC PID 5.0 at 27 (OP-2). The Third Party Test also evaluated Qwest's technical assistance and found, with one minor exception, that all relevant test criteria were satisfied. 65/

7. *Pattern of compliance with the change management process.* Qwest has developed a strong record of compliance with its change management plan (as embodied in the CMP Framework). 66/ First, Qwest has promptly implemented every aspect of the redesigned change management plan as soon as it has been agreed upon in the joint CLEC/Qwest redesign process. CMP Decl. Sections III(B), V(D) and Exhibit DLF-CMP-5 (column 2). Most of the key provisions of the redesigned CMP have been in place for more than seven months. They

65/ Final Report, Tests 24, 10, 12-B, 12-C, and 12.8; *see also* OSS Decl. § VII(A)(3). The one exception is test criterion 24.3-9, which involved the timeliness of Qwest's responses to customer calls to its systems help desk. Final Report at 542. Qwest has addressed this issue, but KPMG concluded it was "unable to determine" Qwest's satisfaction of this criterion because KPMG did not have the opportunity to evaluate the improvements Qwest made by the close of the test. Final Report at 542. *See* OSS Decl. ¶ 641.

66/ *New Jersey 271 Order*, App. C ¶ 42. Qwest's prior change management process -- CICMP -- has been superseded by the redesigned process. The new plan has been implemented, section by section, as agreement has been reached, beginning in July 2001. Because Qwest is no longer following the old CICMP plan, we do not provide evidence regarding Qwest's pattern of compliance with that plan. We note, however, that under the CICMP, Qwest had been conducting monthly change management meetings and processing change requests for Qwest's systems, products and processes that support the five categories of OSS functionality since 1999. CMP Decl. ¶ 4.

include the following aspects of the CMP Framework: Scope, Meetings, Types of Changes, CLEC and Qwest OSS Interface CR Processing, CLEC Product and Process CR Processing, OSS Interface Release Calendar, Introduction/Change/Retirement of OSS Interfaces, Prioritization (except for Regulatory and Industry Guideline changes and packaging), and Escalation and Dispute Resolution. CMP Decl. ¶ 143. 67/

Second, Qwest has compiled a solid record in meeting its obligations with respect to the various provisions and process milestones established in the CMP Framework, as discussed below. In Section V(D) of the CMP Declaration and the accompanying Exhibit DLF-CMP-5, Qwest describes on a section-by-section basis its record of implementation and compliance with the CMP Framework. Qwest's performance since the date of implementation (indicated in parentheses) of each of the key elements of its plan is impressive:

- In processing OSS Interface CRs, Qwest has met more than 99% of its commitments (since November 1, 2001).
- In processing CLEC-initiated product and process CRs, Qwest has met 98% of its commitments (since November 1, 2001).
- In processing Qwest-initiated Level 4 product and process CRs, Qwest has met 100% of its commitments. In processing Qwest-initiated product and process notification requirements for Level 1, Level 2, Level 3 and Level 4 changes, Qwest has met 98% of its commitments (both since April 1, 2002).
- In introducing a new GUI, Qwest has met 100% of the milestones (since November 1, 2001).
- In changing an application-to-application interface, Qwest has met 100% of the milestones (since November 1, 2001).

67/ The CMP redesign agreements reached more recently primarily cover aspects of change management that are beyond what any other RBOC offers, and beyond what the FCC has required for Section 271 approval. *Id.* These include, for example, Qwest-initiated product and process change request procedures, the process for postponement of change request implementation, and prioritization of regulatory changes. CMP Decl. §§ III(C)(4), (7), (8),(13).

- In changing a GUI, Qwest has met 100% of the milestones (since November 1, 2001).
- In retiring an existing GUI, Qwest has met 100% of the milestones reached thus far (since November 2001).
- In issuing production support planned outage notifications, Qwest has issued 100% on a timely basis (since February 2002).
- In processing escalations, Qwest has met more than 98% percent of its commitments (since November 16, 2001).
- In issuing OSS interface release notifications, Qwest has issued 100% on a timely basis (since April 4, 2002). 68/

Qwest also has complied with other provisions of the CMP Framework since they were implemented, as shown in the CMP Declaration, Section V and Exhibit DLF-CMP-5.

Qwest has populated and maintained its website with CMP-related documents, as provided by the CMP Framework, and has posted and updated its OSS Interface Release Calendar. CMP Decl. ¶¶ 124-26. Qwest also has met its obligations to (1) track and document the status of change requests; (2) hold regular CMP meetings; (3) provide meeting materials in advance of the meetings; and (4) record meeting discussion, action items, and issues. CMP Decl. ¶¶ 147-48 and Exhibit DLF-CMP-5. Qwest also has met its commitment, which became effective January 2, 2002, to provide green highlighting of all changes to its PCAT (over 350 changes since January 2) and to redline all changes to its technical publications (approximately nine since January 2), and to provide CLECs opportunities to comment on changes to these documents. CMP Decl. ¶ 171.

For IMA-EDI release 10.0, Qwest met every milestone. *Id.* ¶ 159. With respect to the PID applicable to the change management process, PO-16 (measuring timeliness of release

68/ As discussed in the CMP Declaration at ¶¶ 161-64, in connection with PO-16, Qwest missed some of the release notification dates in the months before the CMP Framework release notification timeframes became effective (April 4, 2002).

notifications), Qwest met the benchmark for three of the last four months, ending with May. *Id.* ¶ 162; Regional Commercial Performance Results at 74 (PO-16). In order to remedy problems that occurred in earlier months, Qwest has improved its tracking and release notification internal procedures and has designated a project manager to be responsible for ensuring that systems release notifications are tracked and issued on a timely basis. *Id.* ¶ 163.

Qwest also has complied with the CMP prioritization procedures. In August 2001, and again in October/November 2001, CLECs and Qwest jointly prioritized CLEC and Qwest initiated CRs for the IMA 10.0 release. CMP Decl. ¶ 166. In February 2002, they prioritized CLEC and Qwest initiated CRs and Industry Guideline CRs for the IMA 11.0 release. In February, there were only 9 outstanding CLEC-initiated CRs. *Id.*

KPMG evaluated Qwest's change management process in the Third Party Test, Test 23. ^{69/} Of 18 test criteria, KPMG found 11 satisfied and none unsatisfied, and classified the other seven as "unable to determine." Final Report at 51, 513-32 (Table 23-2: Evaluation Criteria and Results). Overall, the KPMG results are positive and support the conclusion that Qwest has met all the criteria identified by the FCC as relevant under Section 271. For the most part, the issues remaining "unable to determine" by KPMG involve elements of the Qwest change management plan that are outside what the FCC has required for Section 271 purposes (*i.e.* changes to products and processes, postponement procedures, prioritization of regulatory changes, and the Special Change Request Process (SCRPP)). *See* Final Report at 526, 531; CMP Decl. ¶¶ 107-109. ^{70/} Because these elements of the CMP Framework were agreed upon and

^{69/} Other KPMG tests are relevant to certain other FCC change management criteria (EDI documentation, technical assistance, and interface testing) and are discussed above in the appropriate section and in the OSS Declaration, § VIII(A).

^{70/} The principal exception to this is KPMG's concern for about Qwest's procedures for tracking and issuing systems notifications. As discussed below, Qwest has had improved

implemented relatively recently, KPMG did not have a lengthy opportunity to evaluate them before the close of the test. *See* CMP Decl. Exh. DLF-CMP-5.

In the Final Report, KPMG found the following six evaluation criteria to be satisfied for systems change management: 71/

- The change management process responsibilities and activities are defined.
- The change management process is in place and documented.
- The change management process has a framework to evaluate, categorize, and prioritize proposed changes.
- The change management process includes procedures for allowing input from all interested parties.
- The change management process defines intervals for considering and notifying customers about proposed changes.
- Documentation regarding proposed changes is distributed to wholesale customers.

Of the seven “unable to determine” criteria in KPMG’s Test 23, three related to systems interfaces. Final Report at 513-32. The other four concerned Qwest’s procedures for handling product and process changes, and thus do not have implications for Section 271 approval, as the Commission has limited its Section 271 review to changes to a BOC’s OSS interfaces. *Id. See, e.g., Georgia/Louisiana 271 Order* at ¶ 180 & n.673; *New Jersey 271 Order*, App. C¶ 41.

Several issues were involved in KPMG’s “unable to determine” conclusions. For example, KPMG noted that it had not had the opportunity to observe the improvements made in

procedures in place since April 1, 2002, and has established a perfect record of compliance since that time. *See also* CMP Decl. ¶ 162-64.

71/ Final Report at 513-19, Evaluation Criteria 23-1-1, 23-1-2, 23-1-3, 23-1-4, 23-1-5, 23-1-6. *See* CMP Decl. ¶ 103.

Qwest's tracking and notification procedures for systems release notifications. Final Report at 519-20, 523-25. Those improved procedures have been in place since April 1, 2002, however, and Qwest has had a perfect record of compliance since that time. CMP Decl. 162-64. More fundamentally, as set forth in detail in the CMP Improvements Matrix, Qwest has already demonstrated a strong pattern of compliance over time with the rest of its redesigned CMP. *Id.* Section V(D) and Exh. DLF-CMP-5. In the three months since it implemented the new procedures for Qwest-initiated product and process changes, Qwest also has demonstrated consistent compliance. *Id.* ¶ 153. There is no reason to doubt that Qwest will continue to comply fully with the CMP Framework, including the recently adopted provisions.

KPMG also reached an "unable to determine" conclusion regarding the prioritization of systems changes. This was based, improperly, on its insistence that it should be able to review Qwest's compliance with each of the CMP Framework's notification and documentation requirements for an entire new major release. Final Report at 520-23; *see* CMP Decl. ¶¶ 110-113. ^{72/} Qwest has satisfied every CMP Framework milestone in IMA-EDI release 10.0. CMP Decl. ¶ 166. KPMG's concern that it did not have an opportunity to observe the prioritization process in connection with certain recently-adopted CMP Framework elements also is not a Section 271 issue because these are not necessary elements of a Section 271-compliant change management plan. *Id.* ¶¶ 105, 110-113. In any event, given Qwest's pattern of compliance in meeting its other CMP milestones, there is every reason to assume that Qwest will comply with the newer aspects of the redesigned CMP.

^{72/} Because of the long lead time for planning a major release, Qwest was not able to show this until the June 16, 2002, implementation of IMA-EDI 10.0. CMP Decl. ¶¶ 110-113. KPMG had adequate opportunities to review Qwest's compliance with aspects of the redesigned CMP Framework in connection with three releases: IMA-EDI 9.0, 10.0, and 11.0. *Id.* ¶¶ 110-113.

CGE&Y, the third party test consultant in Arizona, also reached positive conclusions with respect to Qwest's change management plan, as did the ACC Staff. ^{73/} The ACC Staff stated that "there is no question . . . that Qwest has, with extensive assistance by the CLECs, developed one of the most comprehensive and effective Change Management Processes in existence in the telephone industry today." CMP Decl. ¶ 120, quoting ACC Staff Supplemental Report (May 7, 2002) at ¶ 86, CMP Decl. Exh. DLF-CMP-10. In sum, Qwest has demonstrated a strong record of compliance over an extended period of time with the key elements of its redesigned change management plan.

IV. QWEST'S PRICES FOR UNBUNDLED NETWORK ELEMENTS ARE CONSISTENT WITH THE FCC'S TELRIC METHODOLOGY

Qwest's rates for UNEs and other interconnection offerings in Montana, Utah, Washington and Wyoming comply with Section 252(d)(1) of the Act and the Commission's established pricing rules, including the Total Element Long Run Incremental Cost ("TELRIC") methodology. 47 U.S.C. § 252(d)(1); 47 C.F.R. § 51.501 *et seq.* Each of the State Commissions conducted pricing proceedings guided by forward-looking cost-based principles, and established rates that are fully TELRIC-compliant. In addition, in order to expedite the FCC's consideration of this application, Qwest has proposed, and the State Commissions have adopted, further reductions as a result of a "benchmark" analysis, using the rates recently established by the Colorado Public Utilities Commission in proceedings that rank among the most rigorous in the

^{73/} *Id.* ¶¶ 118-120 and Exh. DLF-CMP-9 (CGE&Y May 1, 2002 Report on Qwest CMP and Redesign Process) Exh. DLF-CMP-10, ACC Staff Supplemental Report on Change Management (May 7, 2002), at ¶ 86. The ACC Staff recommended that the ACC find that Qwest meets the FCC requirements for change management, subject to certain data reporting and verification conditions, to which Qwest has agreed. ACC Staff Supplemental Report at ¶¶ 88-94; CMP Decl. ¶ 120 and Exh. LN-OSS-76 (Qwest's Comments Regarding CGE&Y's Final Report, May 17, 2002).

nation. ^{74/} Indeed, the Colorado PUC, “[r]ecognizing that it may serve as a benchmark for the other states in Qwest’s region, . . . has taken its rate setting mandate very seriously. . . . In order to [ensure that prices fall within the TELRIC range of reasonableness and thereby satisfy the FCC’s pricing guidelines], the COPUC focused its hearings on three things: (1) the relative merits and transparency of the cost models presented by the parties; (2) the reasonableness of the assumptions underlying the cost models; and (3) whether the cost models give outputs that yield plausible, real world, TELRIC prices.” Comments of the Colorado Public Utilities Commission, WC Docket No. 02-148 (July 3, 2002), at 29.

The State Commissions of Montana, Utah, Washington and Wyoming each conducted pricing proceedings that were intended to, and did, produce TELRIC-compliant rates. First, the WUTC conducted an extraordinarily comprehensive set of UNE pricing dockets over a five-year period, which led to TELRIC-based rates for all of Qwest’s UNE, interconnection, and collocation offerings. ^{75/} Collectively, these dockets produced a record over 40,000 pages long, included 35 days of workshops and hearings, and resulted in 64 separate WUTC orders, the most recent of which issued just a few weeks ago. The WUTC established TELRIC-based rates using models submitted by Qwest, AT&T and other CLECs, as well as Verizon’s predecessor, GTE

^{74/} See the multiple Declarations of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in each of Montana, Utah, Washington and Wyoming (each, respectively, the “Thompson [State] Decl.”), Att. 5, App. A; *see also* Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Colorado (“Thompson Colo. Decl.”) (filed in WC Docket No. 02-148 and reprinted in Att. 5, App. P to this application).

^{75/} The WUTC has extensive experience with setting rates for UNEs and other wholesale service offerings based on forward-looking cost; indeed, when the FCC adopted its pricing rules in 1996, it cited the WUTC’s pre-existing pricing proceedings as models for its own methodology. *Local Competition Order*, 11 FCC Rcd at 15818 ¶ 631 n.1509.

(whose ILEC operations in Washington were also subject to these proceedings). *See* Thompson Wash. Decl. ¶¶ 10-35.

The PSCU also established TELRIC-based rates through two detailed UNE pricing proceedings, the first in 1998 and the second in 2001-02, issuing a final order in the latter proceeding on June 6, 2002. While Utah is a relatively small state, its pricing proceedings were remarkably thorough and yielded a full suite of TELRIC-compliant rates. *See* Thompson Utah Decl. ¶¶ 3-34.

In Montana and Wyoming, the State Commissions first established Qwest's TELRIC-based UNE rates through arbitration proceedings between Qwest and AT&T. Each state then initiated a generic cost docket in 2001, with a full set of filings by Qwest and other parties. Both the Montana and the Wyoming cost proceedings were settled through the comprehensive consensus of all interested parties, *i.e.*, through stipulations signed by Qwest, the state consumer advocate agency, and all actively participating CLECs. ^{76/} These stipulations, approved by the Montana and Wyoming Commissions, provided for rates that satisfied the FCC's TELRIC rules. *See* Thompson Mont. Decl. ¶¶ 7, 9-12; Thompson Wyo. Decl. ¶¶ 6-7, 9-11.

Although TELRIC-compliant UNE rates were already in place in Montana, Utah, Washington and Wyoming, Qwest has now further lowered its core UNE rates in all four states (under this Commission's familiar benchmarking process) in order to expedite consideration of these applications. It is well established that a Section 271 applicant may rely on the "existing work product" of another state if the Commission concludes that the rates in that other state are

^{76/} Although it sought arbitration of interconnection agreements with Qwest in Montana and Wyoming, including the establishment of prices for UNEs and interconnection, AT&T did not

TELRIC-compliant. 77/ In this case, benchmarking the rates in Montana, Utah, Washington and Wyoming against those in Colorado independently confirms that the rates in these states satisfy the cost-based pricing requirement of Section 271, because, as demonstrated in the Thompson Colorado Declaration (and in WC Docket No. 02-142), the rates in Colorado are themselves TELRIC-compliant.

The benchmarking analysis proceeds as follows. First, for each recurring unbundled loop rate element (including 2-wire and 4-wire analog loops in each geographic pricing zone, and DS1 and DS3 high-capacity loops), as well as each UNE rate element that is included in UNE-P (*i.e.*, local switch usage, local switch port, tandem switching, and shared transport), Qwest compared the existing rates in each state with “Colorado benchmarked rates” – that is, rates produced by multiplying the corresponding Colorado rates by the cost ratio between the respective state and Colorado predicted by the adjusted version of the FCC’s Synthesis Model that the FCC has used in prior Section 271 decisions relying on rate benchmarking. 78/

participate at all in Montana’s generic cost proceeding, and it withdrew from Wyoming’s generic cost proceeding shortly after the proceeding commenced.

77/ *Pennsylvania 271 Order*, 16 FCC Rcd at 17456-58 ¶¶ 61-66; *see also Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20752 ¶ 68; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6276 (¶ 82 n.244). Such a rate comparison is particularly valuable where the states are served by a common BOC and have similar, though not necessarily identical, rate structures. *Pennsylvania 271 Order*, 16 FCC Rcd at 17456-58 ¶ 63. To assess cost differences, the Commission uses an adjusted version of the Synthesis Model that it adopted for purposes of estimating relative cost differences among states in the universal service context. *Id.*, n.249; *see Federal-State Joint Board on Universal Service Tenth Report and Order*, 14 FCC Rcd 20106 (1999), *aff’d sub nom. Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001); *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20746-47 ¶ 57. “[I]f the percentage difference between the applicant state’s rates and the benchmark state’s rates does not exceed the percentage difference between the applicant state’s costs and the benchmark state’s costs, as predicted by the USF model, then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant.” *Pennsylvania 271 Order*, 16 FCC Rcd at 17457-58 ¶ 65.

78/ *See, e.g., Pennsylvania 271 Order*, 16 FCC Rcd at 17458 n.249 (model adjusted to reduce overhead cost and spread over all elements, to incorporate cost of access usage as well as local

Consistent with numerous FCC 271 precedents, Qwest compared the rates in other states with the rates in Colorado in two groupings: (1) loop-related rate elements, and (2) non-loop-related UNE-P rate elements.

For loop-related recurring rate elements, Qwest took the statewide average Colorado rate for 2-wire analog loops, used the FCC's modified version of the Synthesis Model to adjust that rate to a "benchmark" level for each of the other states, and compared the product with each state's statewide average 2-wire analog loop rate. In Wyoming, the existing average loop rate was less than the Colorado benchmark level, so no further reductions were necessary. Thompson Wyo. Decl. ¶ 14. However, in Montana, Utah, and Washington, the existing average loop rates in each state exceeded the Colorado benchmarked average loop rate for the state. Accordingly, for each of these states, Qwest reduced the 2-wire loop rates in each zone in the state by a uniform percentage to bring the composite statewide average rate down to the level of the Colorado benchmarked composite rate. Qwest then computed the rate relationships between the CPUC-adopted 2-wire loop rate and the rates the CPUC adopted for other types of loops (e.g., 4-wire analog loops, sub-loop distribution, and various types of high-capacity loops); applied the same rate relationships to the "benchmark" 2-wire rates in each zone in the other state to develop benchmark rates for each of these loop rate elements; and applied the same process of rate reductions where necessary. Qwest did not implement rate reductions where the existing rate in a state was already below the benchmark rate derived from the Colorado-ordered rate. *See* Thompson Mont. Decl. ¶¶ 16-19; Thompson Utah Decl. ¶¶ 41-43; Thompson Wash. Decl. ¶¶ 39-41.

usage into usage-sensitive elements, and to include allowance for wholesale uncollectibles rather than retail uncollectibles). Qwest correctly modified the model for this analysis by changing the

For the non-loop UNE-P recurring rates, Qwest undertook a similar, but slightly different, process of benchmark rate comparisons. Following the FCC's standard benchmarking methodology, Qwest developed a composite per-line rate for the non-loop portion of UNE-P, both for Colorado and for each of the other states, combining per-line and usage sensitive rate elements using the standard FCC methodology. ^{79/} The existing composite non-loop UNE-P recurring rates in Washington were lower than benchmark-adjusted composite non-loop UNE-P rates for Colorado; as a result, the rates in Washington already satisfied the benchmark analysis, and no further adjustment was necessary. See Thompson Wash. Decl. ¶¶ 44-45.

In Montana, Utah, and Wyoming, the Colorado benchmark-adjusted composite non-loop UNE-P rates were lower than the composite non-loop UNE-P rate for each of the states, so Qwest adjusted the non-loop UNE-P rates in these states as follows. First, the shared transport rates and tandem switching rates in Montana and Wyoming were reduced to the same actual price levels – \$0.00111 per minute and \$0.00069 per minute, respectively – as those

inputs to reflect the fact that certain Utah exchanges that were served by Qwest at the time the Synthesis Model was developed have since been sold. Thompson Utah Decl. ¶ 40 n.74.

^{79/} To convert the per-minute rates for local switching and shared transport to per-line equivalents, Qwest assumed 1200 originating and 1200 terminating local minutes per line per month; 370 originating and terminating intraLATA toll, intrastate interLATA, and interstate interLATA minutes per line per month; 25% of local minutes are intra-switch and 75% are inter-switch; and 20% of transport minutes utilize the access tandem switch. These assumptions are the same as the values this Commission itself has used in many prior Section 271 filings. See *Pennsylvania 271 Order*, 16 FCC Rcd at 17459 n. 252; *Maine 271 Order*, ¶ 33 & n.131. Importantly, even in Section 271 decisions where non-standardized, state-specific usage assumptions were used in benchmark analyses, the Commission acknowledged that, “[w]hile we conclude that it is reasonable to use state-specific demand assumptions in this application, we note that use of the standardized demand assumptions in the *Pennsylvania Order* may also be reasonable depending on the particular section 271 application under review. The absence of valid state-specific demand data, for example, might be a reason to use the Commission’s standardized demand assumptions.” *New Jersey 271 Order* ¶ 53. Qwest does not have studies that support state-specific data that delineate the numbers or percentages of originating and terminating intraLATA toll, intrastate interLATA, and interstate interLATA minutes per line per month, broken down on an intra-switch, inter-switch, and tandem routed basis.

adopted by the CPUC. The established shared transport rate in Utah (\$0.00099) was lower than the Colorado shared transport rate (\$0.00111) so it was unchanged by Qwest. Next, Qwest adjusted the per-minute local switching usage rate element in all three states to bring the comparison state's composite rate for the non-loop UNE-P elements down to the same level as the benchmark-adjusted version of the corresponding Colorado composite rate. No rate reductions were applied to the local switch port rates in any of the states, since those rates already had relatively low rate levels by comparison to levels in many other states. *See* Thompson Mont. Decl. ¶¶ 20-21; Thompson Utah Decl. ¶¶ 44-45; Thompson Wyo. Decl. ¶¶ 15-16.

With respect to non-recurring charges relating to installation of unbundled loops, Qwest reduced the rates that exceeded their counterparts in Colorado to equal the Colorado rates. ^{80/} Additional information about the rate elements that were changed and about the specific methodology used to compute those rate changes is available in the separate Declarations of Jerrold Thompson for each of Montana, Utah, Washington and Wyoming. ^{81/}

Qwest implemented the rate reductions in these four states by filing revised SGATs (and in the case of Washington, a revised tariff as well). Each of the State Commissions adopted decisions allowing the rates to take effect, subject to potential further revisions in future

^{80/} Since it is inappropriate to use the Commission's cost model to adjust non-recurring charges on a state-specific basis, the Commission compares the absolute rate levels of non-recurring charges between the applicant state and the benchmark state without making cost adjustments. *See, e.g., Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20747 ¶ 57 n.159, 20753 ¶ 71, 20755 ¶ 74.

^{81/} *See* Thompson Mont. Decl. ¶ 22; Thompson Utah Decl. ¶ 46; Thompson Wash. Decl. ¶ 46-47; Thompson Wyo. Decl. ¶ 17.

UNE pricing proceedings. 82/ Qwest will continue to make these rates available in these states unless and until they are superseded by new rates ordered by the relevant state commission.

The WUTC conducted a comprehensive review of the recurring rates for the High Frequency Portion of the Loop (“HFPL”) element used in line sharing arrangements, and set a rate of \$4.00. 83/ The Montana and Wyoming Commissions adopted the rates stipulated by the parties: \$5.00 and \$4.89, respectively. 84/ Although there is some dispute about the methodology that should be applied to determine the price for line sharing, 85/ the Commission’s TELRIC-based pricing principles clearly cannot mean that CLECs are entitled to the use of a

82/ *Work Session Minute Entry*, Docket D.2000.6.80 (MPSC July 9, 2002); *Application of QWEST CORPORATION for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)*, Docket No. 00-049-08, Final Order Regarding Qwest §271 Compliance at 4 (PSCU July 8, 2002); *Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act*, 39th Supplemental Order; Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management and Public Interest, Docket Nos. UT-003022, UT-003040 at ¶ 327 (WUTC July 1, 2002); *Application of Qwest Corporation Regarding Relief Under Section 271 of the Federal Telecommunications Act of 1996, Wyoming's Participation in a Multi-State Section 271 Process, and Approval of Its Statement of Generally Available Terms*, Docket No. 70000-TA-00-599, Record No. 5924, ¶¶ 4-6 (WPSC July 9, 2002)..

83/ *Pricing Proceeding for Interconnection, Unbundled Element, Transport and Termination, and Resale*, Thirteenth Supplemental Order; Order on Prehearing Conference, Docket Nos. UT-960369, UT-960370, UT-960371 (WUTC Sept. 3, 1998) (“*WUTC Thirteenth Supplemental Order*”); Thompson Wash. Decl. ¶¶ 33-35.

84/ *See Filing by Qwest Corporation, f/k/a U S WEST Communications, Inc. to Determine Wholesale Discounts, prices for Unbundled Elements, Collocation, Line Sharing and Related Matters*, Docket No. D2000.6.89, Order No. 6260b (MPSC Oct. 12, 2001); ; Thompson Mont. Decl. ¶ 12; Thompson Wyo. Decl. ¶ 9. The Utah Commission set the recurring rate at zero. *See* Thompson Utah Decl. ¶ 35.

85/ The *Line Sharing Order* set forth one possible pricing methodology that states “may” use, but by its terms it did not *require* them to do so. *Line Sharing Order*, 14 FCC Rcd at 20975 ¶ 139. The Commission has recognized that “it is difficult for regulators to determine an economically optimal allocation of . . . joint and common costs,” *Local Competition Order*, 11 FCC Rcd at 15846 ¶ 678 – *i.e.*, that there is no definitive “right answer” to how to properly allocate joint costs like the cost of the shared loop among elements.

costly ILEC network resource for nothing. ^{86/} In economic terms, the cost of the shared loop is a “joint cost.” *Local Competition Order*, 11 FCC Rcd at 15845 ¶ 676 (defining “joint costs” as “costs incurred when two or more outputs are produced in fixed proportion by the same production process”). Even if an ILEC were to incur no direct costs in providing the HFPL element other than the joint cost of the shared loop, the FCC, in the *Local Competition Order*, definitively rejected “setting the price of each discrete network element based solely on the forward-looking incremental costs directly attributable to the production of individual elements [because such an approach] will not recover the total forward-looking costs of operating the wholesale network.” *Id.*, 11 FCC Rcd at 15852 ¶ 694. As the WUTC put it,

Because the cost of the loop is considered to be a shared cost for the provision of voice and advanced services, we conclude that a portion of the cost of the loop should be recovered from LECs providing advanced services and specifically digital subscriber line services. We base this conclusion on FCC pricing guidelines, our reading of the 1996 Telecommunications Act, the Commission’s prior orders, and our rejection of the arguments that there is a zero cost associated with providing the [HFPL]. ^{87/}

^{86/} Although the pricing requirements in the *Line Sharing Order* are not clear, the *Order* purported to “extend” the principles underlying the TELRIC economic costing methodology to a new situation. *Line Sharing Order*, 14 FCC Rcd at 20975 ¶ 138. The Commission observed, in the *Line Sharing Order*, that “the TELRIC methodology that the Commission adopted in the Local Competition First Report and Order does not directly address this issue,” because “the TELRIC methodology was designed to price ‘discrete network elements or facilities,’ rather than services. In the case of line sharing, however, the facility in question is, by definition, also used for two incumbent LEC services (local exchange service and interstate access service). The TELRIC methodology established in the *Local Competition Order*, as a definitional matter, does not apply to line sharing, because TELRIC is intended to develop rates for discrete network elements, while line sharing involves two carriers sharing the use of a single facility.” *Id.*

^{87/} *WUTC Thirteenth Supplemental Order* at ¶ 57. See also *U S WEST Communications, Inc.’s Statement of Generally Available Terms and Conditions*, Docket No. 99A-577T, Decision No. C01-1302 at 114-15 (Colorado PUC, Dec. 21, 2001) (“A positive price is required to mirror the allocation of resources that a competitive market would produce . . . [and] to reflect a reasonable allocation of joint and common costs.”) (citing 47 C.F.R. §§ 51.505(a) and (c)), *recon. granted in part and denied in part*, Decision No. C02-409 (Colorado PUC Apr. 17, 2002),

To be sure, parties may disagree about the meaning of the *Line Sharing Order*'s rules regarding the pricing standard for the shared loop. For that matter, parties differ as to whether the *Line Sharing Order* will be effective at all going forward, and whether ILECs will be obligated to provide line sharing at all in the future. ^{88/} Particularly in light of these uncertainties, the pricing of line sharing clearly is one of the unresolved legal disputes that provides no basis for denying a Section 271 application. ^{89/}

In sum, as a result of the TELRIC-compliant state rate decisions, combined with the voluntary rate reductions implemented by Qwest, the rates in Montana, Utah, Washington

further recon. granted in part and denied in part, Decision No. C02-636 (Colorado PUC June 6 2002). *See* Att. 5, App. C.

Moreover, the main pricing policy objective of the *Line Sharing Order* appears to be to ensure that "CLECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services" and to "alleviate any potential price squeeze." *Line Sharing Order*, 14 FCC Rcd at 20976 ¶ 141. But the retail rates for Qwest's DSL service, which start at approximately \$21.95 per month (*see* <http://www.qwest.com/dsl/learn/pricing.html>), are four to five times higher than the wholesale line sharing rates (\$5.00 in Montana, \$4.00 in Washington, and \$4.89 in Wyoming). This wide gap between the retail and wholesale prices at issue makes it intuitively clear that Qwest would easily satisfy any imputation test and that there is no possibility of a price squeeze.

^{88/} *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (vacating line sharing rules); *see* note 38, above.

^{89/} As the Commission has explained, "the section 271 process could not function as Congress intended if we adopted a general policy of denying any section 271 application accompanied by unresolved pricing and other intercarrier disputes." *Texas 271 Order*, 15 FCC Rcd at 18394, ¶ 87. Indeed, "at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC's obligations under sections 251 and 252." *Id.* Although "BOCs and their competitors can be expected to take opposite positions in those disputes," and although "the adjudicated resolution ultimately will often fall somewhere in between the positions of the opposing parties," this Commission has rightly found that Congress did not intend for "uncertainty about the proper outcome of such disputes" to "undermine a section 271 application." *Id.* *See also AT&T Corp. v. FCC*, 220 F.3d 607, 622-23 (D.C. Cir. 2000).

and Wyoming are certainly no higher than “the range that a reasonable application of TELRIC principles would produce.”

V. QCC WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

As required by the 1996 Act, all services that are subject to the requirements of Section 272 will be provided through a separate affiliate that complies with the requirements of that section and the Commission’s rules. Here, the BOC is QC. The Section 272 affiliate is QCC. Section 271(d)(3)(B) provides that the Commission shall not approve this application unless it finds that the requested authorization will be carried out in accordance with the requirements of Section 272. This application, including the Declarations of Judith L. Brunsting, Compliance with Section 272 by the 272 Affiliate (“Brunsting Decl.”), and Marie E. Schwartz, Compliance with Section 272 by the BOC (“Schwartz Decl.”), Att. 5, App. A, demonstrates that Qwest complies with this requirement.

Section 272 defines how a BOC and its affiliate offering in-region interLATA services must operate once the BOC receives Section 271 authority. The FCC set standards for compliance with Section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*. Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its Section 272 affiliate. ^{90/} In addition, these safeguards ensure that the BOC does not discriminate in favor of its Section 272 affiliate. ^{91/} To satisfy Section 271(d)(3)(B), the BOC and the 272 affiliate must

^{90/} *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20,780 ¶ 122.

^{91/} *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914 ¶¶ 15-16; *Michigan 271 Order*, 12 FCC Rcd at 20725 ¶ 346; *Arkansas/Missouri 271 Order* ¶ 122.

present evidence that they are prepared to operate under the terms of Section 272 once the BOC is granted authorization to provide in-region interLATA services. In essence, the Commission makes a “predictive judgment” about whether the BOC applicant will comply with Section 272. ^{92/} In making this predictive judgment, the Commission should give weight to the fact that QC and QCC already are implementing the requirements of Section 272 even though the requirements do not yet apply.

A. Qwest Will Comply with Each of the Requirements of Section 272

1. QCC Is a Separate Affiliate as Required by Section 272(a)

The BOC, QC, and its 272 affiliate, QCC, satisfy the Section 272(a) requirement that a BOC may not provide in-region interLATA services except through an affiliate that both is “separate” from the BOC and meets the requirements of Section 272(b). QCC is a separate affiliate. Brunsting Decl. ¶ 21. Both QC and QCC are wholly owned indirect subsidiaries of QCII. Neither QCC nor QC owns any stock in the other. Brunsting Decl. ¶ 21.

2. QC and QCC Will Comply with the Structural and Transactional Requirements of Section 272(b)

QCC will be operated as an independent carrier and will conduct business with QC on an arm’s-length basis. Accordingly, as explained below, QC and QCC comply with the five requirements of Section 272(b).

272(b)(1): QCC will operate independently from QC. QCC does not and will not own any domestic transmission or switching facilities, or the land and buildings where they are located, jointly with QC. Likewise, QCC has not engaged and will not engage in any operation,

^{92/} *Michigan 271 Order*, 12 FCC Rcd at 20715 ¶ 347 (“Section 271(d)(3)(B) requires the Commission to make a finding that the BOC applicant will comply with section 272, in essence a predictive judgment regarding the future behavior of the BOC.”); *see also Second Louisiana 271 Order*, 3 FCC Rcd at 20785 ¶ 321.

installation, or maintenance services with respect to facilities owned by QC. Finally, QCC will operate, install, and maintain its own network, either directly or by contracting with third parties that are not affiliated with QC. Brunsting Decl. ¶¶ 27-28; Schwartz Decl. ¶¶ 38-41.

272(b)(2): QC and QCC maintain separate books, records, and accounts in accordance with Generally Accepted Accounting Principles (GAAP). QCC has established and maintains a chart of accounts that is separate from QC's. QCC maintains expenditure controls to ensure that funds are expensed and accounted for properly. Brunsting Decl. ¶ 29a-j; Schwartz Decl. ¶¶ 42-50.

272(b)(3): QC and QCC have separate officers, directors, and employees. In the Bell Atlantic-New York and SBC-Texas orders, the Commission found that a comparison of the BOC and the Section 272 affiliate's officer and director lists and payrolls was sufficient to show compliance with Section 272(b)(3). *New York 271 Order*, 15 FCC Rcd at 4155 ¶ 409; *Texas 271 Order*, 15 FCC Rcd at 18551 ¶ 401. The Commission has specifically rejected contentions that a BOC must provide detailed information regarding reporting relationships. *See Second Louisiana 271 Order*, 13 FCC Rcd at 20789-90 ¶ 330. QC and QCC also have implemented extensive controls to govern sharing of services in order to ensure that the companies operate independently and that confidential information is not shared between them. QC and QCC also have a policy prohibiting any loaning of an employee between QC and QCC. Brunsting Decl. ¶¶ 30-32; Schwartz Decl. ¶¶ 51-57.

272(b)(4): QCC will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of QC. Brunsting Decl. ¶¶ 33-36; Schwartz Decl. ¶¶ 58-61.

272(b)(5): QC and QCC will conduct all transactions with each other on an arm's-length basis, in accordance with this Commission's accounting rules, and will reduce all transactions to writing and make them available for public inspection. Procedures are in place to ensure that all Section 272 transactions comply with the Commission's affiliate-transaction rules; that they are reduced to writing, certified by an officer, and made available for public inspection at QC's headquarters; and that they are recorded at rates that comply with the Commission's rules. All goods, services, facilities and information provided by QC to QCC will be made available to other unaffiliated IXCs at the same rates, terms and conditions. Brunsting Decl. ¶¶ 37-47; Schwartz Decl. ¶¶ 62-76.

3. QC Will Comply with the Nondiscrimination Safeguards of Section 272(c)

As required by Section 272(c)(1), QC will not discriminate between QCC and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. Like any other IXC, QCC must contact an account representative at QC to obtain goods, services, facilities and information. QC has established a Compliance Oversight Team and a rigorous review process to ensure that it satisfies the requirement to provide services to its Section 272 affiliate on a nondiscriminatory basis. This process also ensures that all goods, services, facilities and information provided by QC to QCC are reduced to writing, disclosed and made available to unaffiliated entities, and priced according to the requirements of Section 272(b)(5). Schwartz Decl. ¶¶ 77-78, 80-82. In addition, QC and its affiliates adhere to a procurement policy that requires selection of suppliers of products and services without discrimination, based upon the best combination of total cost, quality, service, and availability. *Id.* ¶ 79.

As required by section 272(c)(2), QC will account for all transactions with QCC in accordance with the Commission's cost-allocation and affiliate-transaction rules. The Joint Cost Audit, annual SEC Form 10-K, and Cost Allocation Manual filings provide assurances that Qwest will comply with all required accounting principles. *Id.* ¶¶ 83-85.

4. Qwest Will Comply with the Audit Requirements of Section 272(d).

The BOC will obtain and pay for an independent auditor to conduct a joint Federal/State audit every two years in accordance with section 272(d) and the Commission's rules. A joint Federal/State biennial audit oversight team will determine the scope of each audit. The auditor will have access to the financial accounts and records of QC and QCC to verify that all transactions conducted between them were appropriate under the requirements of Section 272. The FCC will be given access to the working papers and supporting materials of the independent auditor, with appropriate protection for proprietary information. *Id.* ¶¶ 87-90.

5. Qwest Will Fulfill All Requests in Accordance with Section 272(e)

Qwest will comply with the provisions of Section 272(e). QC will not discriminate in favor of QCC with respect to requests for exchange and exchange-access services. QC's response time for requests for telephone exchange service and exchange access from unaffiliated entities will be no longer than its response times with respect to itself or its affiliates, *see* 47 U.S.C. § 272(e)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22019 ¶ 240, and it will provide goods, services, facilities and information concerning its provision of exchange access on a nondiscriminatory basis. *See* 47 U.S.C. § 272(e)(2). QCC will obtain such services from QC under the same tariffed terms and conditions as are available to unaffiliated IXCs. QC will thus charge QCC an amount "no less than the amount charged to any unaffiliated interexchange carriers for such service," as required by Section 272(e)(3). QC's sales representatives will process orders in a nondiscriminatory manner. To the extent that QC

provides interLATA or intraLATA goods, facilities, information or services to QCC, they will be provided “at the same rates and on the same terms and conditions,” 47 U.S.C. § 272(e)(4), as are made available to all carriers. Schwartz Decl. ¶¶ 92-93.

QC will maintain, update, and make available data on provisioning telephone exchange services and exchange access to QCC. This performance data will be reported monthly, and the results will be posted on the Internet. *Id.* ¶ 93.

6. Qwest and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g)

QCC will not market or sell QC’s local exchange services except to the extent that QC permits other entities offering the same or similar service to do the same. *See* 47 U.S.C. § 272(g)(1). QC will not market or sell QCC’s interLATA service originating in an in-region state unless and until the FCC has granted Section 271 authority for that state. *See* 47 U.S.C. § 272(g)(2). Brunsting Decl. ¶¶ 48-54; Schwartz Decl. ¶¶ 94-97.

7. QC’s and QCC’s Education and Training Efforts Will Ensure Satisfaction of Their Obligations Under Section 272

The Schwartz and Brunsting Declarations describe the ongoing, comprehensive, and targeted training programs that will ensure that employees of QC and QCC (as well as other Qwest companies) understand and strictly observe the requirements of Section 272. Schwartz Decl. ¶¶ 98-107; Brunsting Decl. ¶¶ 55-57.

B. The Results of an Examination Conducted by KPMG Confirm that Qwest’s Provisioning of InterLATA Services Will Comply with Section 272

A recent examination of Qwest’s Section 272 compliance by KPMG found virtually no substantial errors. *See* Schwartz Decl. Exhibit MES-272-3. The few discrepancies found were not competition-affecting. In any event, QC and QCC have strengthened the controls

that are designed to prevent similar discrepancies. As a result, the Commission can be certain that Qwest is ready to comply with Section 272 upon grant of this application.

In accordance with a recommendation by the Multistate Facilitator, QC engaged KPMG to conduct an independent examination of transactions that occurred between QC and QCC during the period April through August 2001. KPMG concluded that, except as noted in its report, QC and QCC had complied “in all material respects” with Sections 272(b)(2), 272(b)(5), and 272(c)(2), and applicable FCC rules and regulations governing accounting for their transactions with each other.^{93/} KPMG’s report also served to confirm that QC’s and QCC’s internal controls had successfully identified untimely accruals and billings or recording of transactions in the course of the transition to QCC.

KPMG’s report identified only twelve discrepancies, all but one of which previously had been identified by Qwest and all of which have been corrected. Schwartz Decl. ¶ 25. Furthermore, the net financial impact of the discrepancies was actually to *disadvantage* QCC. Thus, those discrepancies did not reflect upon either of the principal issues that Section 272 is designed to address -- “improper cost allocation and cross-subsidization between the BOC and its Section 272 affiliate” and “discriminat[ion] in favor of . . . Section 272 affiliates.” *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20780 ¶ 122. Nor did they reflect any “systemic flaws,” *New York 271 Order*, 15 FCC Rcd at 4157 ¶ 412, in QC’s or QCC’s Section 272 controls, since virtually all of those transactions had been initiated prior to the efforts undertaken to transition to QCC as the 272 affiliate as of March 2001.

^{93/} See Report of Independent Public Accountants, Attestation Examination with Respect to Report of Management on Compliance with Applicable Requirements of Section 272 of the Telecommunications Act of 1996, at 4 (included in Schwartz Decl. Exh. MES-272-3).

QC and QCC used the results of this unprecedented examination to strengthen their Section 272 controls. QC then engaged KPMG to perform yet another review to verify that each of the discrepancies identified in its report had been corrected and to verify that the supplemental controls had been put into place. That review confirmed that all such steps had been taken and that “the new controls and enhancements implemented by Qwest appear to strengthen the overall control environment with respect to Section 272 compliance.” See Schwartz Decl. Exh. MES-272-4.

KPMG’s report and the results of the followup examination therefore further support a Commission finding that Qwest will provide services in compliance with Section 272.

VI. GRANT OF QWEST’S APPLICATION WILL PROMOTE COMPETITION IN BOTH THE LOCAL EXCHANGE AND INTEREXCHANGE MARKETS AND WILL SERVE THE PUBLIC INTEREST

Qwest has opened the local exchange markets in Montana, Utah, Washington and Wyoming and has provided adequate assurances that those markets will remain open in the future, making the grant of its application “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 271(d)(3)(C). In conducting its public interest inquiry, the Commission has focused on three specific areas. First, the Commission examines whether grant of an application would be “consistent with promoting competition in the local and long distance telecommunications markets,” giving substantial weight to Congress’s presumption that long-distance entry would benefit consumers so long as the local market is open, in compliance with the competitive checklist. *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6375-76 ¶ 268. Second, the Commission seeks assurances that the RBOC will continue to meet its Section 271 obligations after a Section 271 application is granted. *Id.* at 6376 ¶ 269. In this analysis, the Commission reviews performance assurance plans and other available enforcement tools.